

August 18, 2014

**Via Email & First-Class Mail**

James W. Webster, Chief  
Emergency Response and Removal Branch  
Superfund Division  
U.S. Environmental Protection Agency  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

**Re: 35<sup>th</sup> Avenue Superfund Site – “Phase II” Removal Action**

Dear Mr. Webster:

I write on Walter Coke’s behalf to respond as requested to your August 8, 2014 letter. We understand from that letter that EPA requests an indication from Walter Coke whether it is interested in meeting with agency staff to discuss the intended removal action described in the letter and potentially participating in the negotiation of an appropriate administrative order on consent to perform the requested work. We also understand from conversations with EPA counsel that EPA’s PRP identification process is ongoing and that additional PRPs identification remains likely, but that EPA apparently intends to proceed with the work described in the August 8 letter (“Phase II”) without necessarily completing further PRP identification.

As an initial matter, we request that EPA provide as soon as practicable the list of the relevant 30 properties that the Agency has identified for Phase I removal. EPA may recall that Walter Coke has raised issues about data EPA has generated, and we need to understand if those data issues affect any of the Phase II yards.

Otherwise, this letter confirms that Walter Coke remains willing to meet with EPA concerning the work in the neighborhoods. It appears that the issues Walter Coke attempted to raise with respect to EPA’s Phase I work remain. Specifically, we continue to ask that EPA (i) explain its assertion that Walter Coke and the other identified PRPs are liable under CERCLA, and (ii) fully describe the status of its efforts to involve the full range of additional PRPs, including an explanation of how EPA purports to differentiate Walter Coke from the scores of other past and current industries in the area that have not yet been named as PRPs. Further, as was the case with Phase I, Walter Coke does not envision agreeing to participate in Phase II absent meaningful participation by the other PRPs to whom the August 8 letter was sent.

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More broadly, EPA's ongoing approach to notify only a handful of PRPs poses a continuing challenge for reaching agreements. Across nearly three years, Walter Coke has repeatedly pointed out to EPA that substances identified in soils in the community are not consistent with Walter Coke operations, and the company has provided information on other obvious alternative sources that tend to explain the findings. EPA has never rebutted these points, nor has EPA ever explained in any detail its liability theory for Walter Coke. And to the extent EPA has alluded to theories, they seem to apply equally to scores of current and former industries in this heavily industrialized area.

We will be prepared to discuss all of these concerns at the contemplated meeting, and Walter Coke's willingness to consider entry of any agreement will depend on satisfactorily addressing these items. It will also, of course, depend on EPA providing all information subject to pending FOIA requests, the participation by other PRPs on an acceptable basis, and the negotiation of mutually-agreeable terms and conditions in an administrative order on consent.

We look forward to hearing from EPA about the next steps. In the meantime, if there are any questions, please feel free to contact me.

Sincerely,



Robert D. Mowrey

cc: Marianne Lodin, Esq. (EPA)  
Phillip Davis (ADEM)  
Jeff Kitchens (ADEM)  
Tom Johnston (ADEM)  
Dan Grucza, Esq. (Walter)